

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Enoch Sowah	Team: Squad #1	CCRB Case #: 202006318	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/16/2020 3:40 PM	Location of Incident: Outside of § 87(2)(b)	Precinct: 79	18 Mo. SOL 3/16/2022	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 09/17/2020 10:53 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/17/2020 10:53 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Ethan Cooley	24949	962993	079 PCT
2. SGT Mark Xylas	01685	948160	079 PCT
3. POM Clint Elie	07909	955899	079 PCT
4. PO Joseph Scaglione	07210	959205	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Greydy Mercedes	09619	956926	079 PCT
2. POM Melvin Clarke	03927	955822	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Mark Xylas	Abuse: Sergeant Mark Xylas stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
B.SGT Mark Xylas	Abuse: Sergeant Mark Xylas frisked § 87(2)(b)	§ 87(2)(b)
C.POM Ethan Cooley	Abuse: Police Officer Ethan Cooley frisked § 87(2)(b)	§ 87(2)(b)
D.PO Joseph Scaglione	Abuse: Police Officer Joseph Scaglione frisked § 87(2)(b)	§ 87(2)(b)
E.POM Ethan Cooley	Abuse: Police Officer Ethan Cooley searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
F.POM Clint Elie	Abuse: Police Officer Clint Elie searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)

Case Summary

On September 17, 2020 and September 24, 2020, § 87(2)(b) and § 87(2)(b) filed this complaint with the CCRB on behalf of themselves, and § 87(2)(b) s § 87(2)(b)-year-old son, § 87(2)(b).

On September 16, 2020, at approximately 3:40 p.m., in front of § 87(2)(b) in Brooklyn, Sergeant Mark Xylas and Police Officers Ethan Cooley, Joseph Scaglione, Clint Elie, Greydy Mercedes, and Melvin Clarke, all from the 79th Precinct, stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (**Allegation A: Abuse of Authority, § 87(2)(g)**). Sgt. Xylas and PO Cooley frisked § 87(2)(b) (**Allegation B and C: Abuse of Authority, § 87(2)(g)**). PO Scaglione frisked § 87(2)(b) (**Allegation D: Abuse of Authority, § 87(2)(g)**). PO Cooley and PO Elie searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (**Allegations E and F: Abuse of Authority, § 87(2)(g)**).

No arrest or summons resulted from this incident.

Nine police body worn camera footages were received for this case (Board Review 01 – Board review 09).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Mark Xylas stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (B) Abuse of Authority: Sergeant Mark Xylas frisked § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Ethan Cooley frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Joseph Scaglione frisked § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Ethan Cooley searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (F) Abuse of Authority: Police Officer Clint Elie searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is not disputed that officers stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants, nor it is disputed that they were frisked, and that their vehicle was searched.

§ 87(2)(b) (Board Review 10) and § 87(2)(b) (Board Review 11) provided consistent testimonies. They said that on the incident date, § 87(2)(b) a black woman, drove her vehicle, a silver Nissan Altima sedan, from her home located at § 87(2)(b) in Brooklyn, to § 87(2)(b) in Brooklyn, which is in the vicinity of Lexington and Stuyvesant Avenues in Brooklyn, to pick up § 87(2)(b) a black man, and § 87(2)(b) a black boy, who were at the location to pick up some shoes for § 87(2)(b) goddaughter. § 87(2)(b) and § 87(2)(b) entered § 87(2)(b) front and rear passenger's seats, respectively, when § 87(2)(b) arrived, and immediately headed back to § 87(2)(b) home, which was approximately five minutes away. § 87(2)(b) and § 87(2)(b) did not interact nor exchange anything with anyone at any of the two locations. § 87(2)(b) doubled parked in front of her building, activated the vehicle's hazard lights, and together with § 87(2)(b) and § 87(2)(b) waited in the vehicle for § 87(2)(b) daughter. Approximately a minute later, approximately three to four unmarked vehicles approached § 87(2)(b) vehicle from behind, and parked in front, besides, and behind § 87(2)(b) vehicle. § 87(2)(b) and § 87(2)(b) had not seen any of the unmarked vehicles at any point prior to their approach. Approximately eight uniformed officers then approached § 87(2)(b) driver and front passenger's sides. The front windows of the vehicle were already lowered at the time the officers approached. § 87(2)(b) and § 87(2)(b) both asked the officers what was going on, but none responded. PO Cooley, identified via investigation, who was on the front passenger's side, ordered § 87(2)(b) out of the vehicle. § 87(2)(b) exited the vehicle, at which point PO Cooley turned him around, brought his hands behind his back, seemingly to handcuff § 87(2)(b) s wrists. § 87(2)(b) asked PO Cooley if PO

Cooley was going to handcuff § 87(2)(b) in front of § 87(2)(b) who was crying in the rear seat. Sgt. Xylas, identified via investigation, approached the front passenger's side, and appeared to say something to PO Cooley, which § 87(2)(b) did not hear. PO Cooley escorted § 87(2)(b) to the rear of the vehicle, and did not handcuff § 87(2)(b). PO Cooley, however, moved his hands around § 87(2)(b)'s waist and lower body on the outside of § 87(2)(b)'s clothing. PO Cooley did not reach inside any of § 87(2)(b)'s pockets, nor did § 87(2)(b) recall having anything in his pockets that potentially created a bulge. PO Scaglione, identified via investigation, who was on the driver's side, ordered § 87(2)(b) out of the vehicle, moved his hands around § 87(2)(b)'s lower body on the outside of § 87(2)(b)'s clothing, and escorted her to the rear of the vehicle. The pat down of § 87(2)(b) and § 87(2)(b) yielded negative results for any weapons or contraband. At some point, officers removed § 87(2)(b) from the rear seat, and brought him to § 87(2)(b) and § 87(2)(b). PO Cooley and PO Elie, identified via investigation, entered and searched the front and rear seats of the vehicle. The vehicle search yielded negative results for any weapons or contraband. Sgt. Xylas ultimately informed § 87(2)(b) and § 87(2)(b) that they were stopped, frisked, and their vehicle searched because the officers had received an anonymous tip that there was a firearm in the vehicle. Sgt. Xylas did not provide any additional information about the alleged anonymous tip. Sgt. Xylas and all the other officers on scene provided § 87(2)(b) and § 87(2)(b) with their business cards, returned to their vehicles, and left the scene.

According to Google Maps, the intersection of Lexington and Stuyvesant Avenues is approximately 0.7 miles away from § 87(2)(b), and that Lexington Avenue is a one-way street that travels west (Board Review 24- Board Review 25).

Sgt. Xylas (Board Review 12), and Police Officers Cooley, Elie, and Scaglione (Board Review 13 – Board Review 15), all provided consistent testimonies, and corroborated § 87(2)(b) and § 87(2)(b)'s account, but with the following exceptions. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) Sgt. Xylas relayed the information to the other officers on his team, who were in two other vehicles, and were also on Lexington Avenue. Approximately a minute later, Sgt. Xylas and PO Cooley, who were in the same vehicle, observed a silver Nissan sedan, which was approximately two to three car lengths away from Sgt. Xylas and PO Cooley's vehicle, make a turn onto Marcy Avenue. Sgt. Xylas and PO Cooley did not recall seeing the occupants in the silver Nissan, but said the vehicle was the only vehicle in the vicinity that matched the description § 87(2)(e)

§ 87(2)(b) The officers thus followed the silver Nissan, and ultimately stopped the vehicle

while it attempted to double park in front of § 87(2)(b) Sgt. Xylas and PO Scaglione approached the driver's side, while PO Cooley and PO Elie approached the front passenger's side. All four officers observed a female driver, § 87(2)(b) a male occupant, § 87(2)(b) in the front passenger's seat, and a child, § 87(2)(b) in the rear seat. Sgt. Xylas § 87(2)(e)

§ 87(2)(b) said § 87(2)(b) presence in the vehicle diminished their belief that § 87(2)(b) vehicle was the alleged vehicle with the firearm. § 87(2)(e), § 87(2)(f)

PO Cooley and PO Scaglione each acknowledged frisking § 87(2)(b) and § 87(2)(b) respectively, and said they did so to ensure their safety given that they believed that there was a firearm in the vehicle. Sgt. Xylas also acknowledged touching § 87(2)(b)'s right pant pocket when § 87(2)(b) exited the vehicle, and said he did so because he wanted to ensure § 87(2)(b) did not have any weapons on his person while exiting the vehicle. PO Cooley and PO Elie also acknowledged searching § 87(2)(b) vehicle, which yielded negative results for any firearm or contraband. § 87(2)(e), § 87(2)(f)

The memo books of all six officers (Board Review 16- Board Review 21), and the stop report prepared by PO Cooley (Board Review 22), are all consistent with Sgt. Xylas, PO Cooley, PO Elie, and PO Scaglione's testimonies § 87(2)(e), § 87(2)(f)

Sgt. Xylas and Police Officers Ethan Cooley, Joseph Scaglione, Clint Elie, Greydy Mercedes, and Melvin Clarke, all recorded the entirety of this incident on their BWCs, and the footage is consistent with both officers' and civilian testimonies. The footage, however, does not depict anything that transpired prior to the officers approaching § 87(2)(b) vehicle (Board Review 01 – Board Review 09).

There are no 911 records—as per EVENT summaries and Resource Recap Logs—that appear to relate to this incident (Board Review 23).

The "fellow officer" rule provides that hearsay information received from another police officer is presumptively reliable, and allows the receiving officer to act on the information relayed by the fellow officer. The rule is a practical one, recognizing that information sent from one police officer to another is likely to be more reliable than information police receive from non-police sources, and therefore gives the receiving officer probable cause to take law enforcement actions such as effecting an arrest. Nevertheless, the officer who receives the information almost always is without first-hand knowledge of whether the information relayed is based on a reliable informant or an anonymous tip. People v. Clark 216 A.D.2d 919 (1995) (Board Review 26) (Also see People v. McLoyd 35 Misc. 3d 822 (2012) and People v. Powell 101 A.D.3d 756 (2012), (Board Review 33 – Board Review 34).

An officer can frisk an individual if the officer reasonably believes that the individual is armed and dangerous. People v. DeBour 40 N.Y.2d 210 (1976) (Board Review 27).

According to the automobile exception to the warrant requirement, a warrantless vehicle search may be conducted when there is probable cause that the vehicle contains a weapon, contraband, or evidence of a crime. People v. Belton 55 N.Y 2d 49 (1982) (Board Review 28).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (Board Review 29).
- Sgt. Xylas has been a member of service for 12 years, and has been a named victim in 15 CCRB complaints, and 34 allegations, six of which were substantiated:
 - Case #201407556 involved a substantiated threat to damage property, and entry and search allegations. The Board recommended Charges. The NYPD rendered a not guilty verdict.
 - Case 201906066 involved a substantiated property damage, and premises entry and search allegations. The Board recommended Charges. The NYPD is yet to impose discipline.
 - § 87(2)(g)
- PO Cooley has been a member of service for four years, and has been a named subject in three CCRB complaints, and three allegations, none of which were substantiated, § 87(2)(g)
- PO Elie has been a member of service for seven years, and has been a named subject in four CCRB complaints, and nine allegations, none of which were substantiated, § 87(2)(g)
- PO Scaglione has been a member of service for six years, and a named subject in four CCRB complaints, and seven allegations, none of which were substantiated, § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b) and § 87(2)(b) filed a Notice of Claim with the City of New York claiming violations to their 4th and 14th Amendment rights, illegal seizure and search, and false imprisonment, and are thus seeking eighty five thousand dollars as compensation. There is no 50H hearing scheduled (Board Review 30).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 1

Investigator:	<u>Enoch Sowah</u>	<u>Inv. Sowah</u>	<u>11/07/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Mgr. Joy Almeyda</u>	<u></u>	<u>11.9.21</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date